

Appl. No. 09/591,185
Amtd. dated 02/16/05
Reply to Office Action dated November 12, 2004

PATENT

REMARKS

Status of the Claims

Claims 32-62 are pending. Claims 1-31 have been canceled.

The Rejections

Under 35 U.S.C. §112, second paragraph

Claims 32-62 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being incomplete for omitting essential elements, such omission amounting to a gap between the elements. Claim 32 is amended to designate the displayed structure as a "probe nucleic acid" and further to clarify that when the stabilizing moieties interact to bring the energy donor and acceptor into operative proximity, the probe nucleic acid "is not hybridized to a target nucleic acid."

Support for the amendment is found in the specification at, for example, FIG. 4 is a schematic that shows the unhybridized probe with the stabilizing moieties (C) bringing the donor (Fluorophore, F) and acceptor (Quencher, Q) into operative proximity. The figure also shows the probe hybridized to a target nucleic acid, resulting in the separation of the donor and acceptor. Additionally, the examples describe a selected probe that is both unhybridized and hybridized to a target sequence. In particular, page 55, lines 30-31 states "[t]he difference in fluorescence output of each probe with and without a complementary hybridization target was compared." Upon hybridization of the probe with its target, the stabilizing moieties separate, forcing the donor and acceptor and out of operative proximity and producing fluorescence. Thus, the specification describes a probe which, in its unhybridized state, includes a donor and acceptor that are brought into operative proximity by the interaction of the stabilizing moieties.

Claims 43 and 62 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are canceled.

Appl. No. 09/591,185
Amdt. dated 02/16/05
Reply to Office Action dated November 12, 2004

PATENT

Replacement Drawing Sheets

In response to the Draftsperson's Patent Drawing Review dated 2/07/02, attached are seven sheets of replacement figures (1-7).

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-442-1000.

Respectfully submitted,

Jeffrey S. Mann
Reg. No. 42,837

MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
San Francisco, California 94105
Tel: 415-442-1000
Fax: 415-442-1001
Attachments
JSM/kad

1-SF/7138666.1